IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL (L) NO.813 OF 2007

IN

NOTICE OF MOTION NO.3402 OF 2007

AND

NOTICE OF MOTION NO.3737 OF 2007

IN

SUIT NO.2501 OF 2007

...

TELE MART INC. ...Appellants

v/s.

GTM TELESHOPPING

PVT.LTD. ...Respondent

...

Mr.I.M.Chagla, Sr.Counsel with Mr.R.I.Chagla and Mr.M. Jamsandekar i/b D.H.Law & Associates for the Appellants.

Mr.D.D.Madon, Sr.Counsel with Mr.Suresh V. Rajeshwar for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 24TH OCTOBER, 2007

P.C.:

By consent of parties, the Appeal is admitted and is heard finally. By consent of parties, the Appeal is disposed of in following terms:

1. The order impugned in the Appeal is set aside.

2. The learned single Judge is requested to frame a preliminary issue as to jurisdiction of this court to entertain the suit and try that issue in accordance with law;

3. The learned single Judge is requested to hear the parties on the question of grant/continuation of ad-interim order on 29-10-2007.

3. It is clarified that the question of continuation/grant of ad-interim order is to be considered by the learned single Judge, though motion taken out by the Plaintiffs under Order XXXIX Rule 2A of CPC is pending.

4. That the motion taken out by the Plaintiffs under Order XXXIX Rule 2A is to be decided after deciding the preliminary issue, so that hearing of that motion does not delay the trial of the preliminary issue. It is clarified that the motion taken out under Order XXXIV Rule 2A is to be decided after the preliminary issue is decided, independently of the decision on the preliminary issue.

5. The learned Counsel appearing for the Defendants states that without prejudice to their rights and contentions, the Defendants shall not sell and advertise their products till 29-10-2007, when the matter is to appear before the learned single Judge.

6. The learned Counsel appearing for the Defendants further states that it is possible that after 8th October, 2007 they may have despatched some material for sale to distributors, which the Defendant may not be able to retrieve immediately.

Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)